

EXECUTIVE SUMMARY

Tens of thousands of children have visited Lilydale Regional Park ("Park") in recent years to explore and search for prehistoric fossils, and they have left the Park without serious mishap or injury. However, on May 22, 2013, a large mass of sand mixed with broken shale fell from the steep bluff overlooking the fossil beds near the Park's East Clay Pit. At the time, fourth-graders from a St. Louis Park elementary school were hunting for fossils at the base of the slope; two of them—Haysem Sani and Mohamed Fofana—died. The apparent cause of the slope failure was natural soil erosion prevalent along the Mississippi River bluffs, aggravated by groundwater migration during a very rainy spring and trampling of foot traffic along unmarked trails.

The City of Saint Paul ("City") retained the Minneapolis law firm of Nilan Johnson Lewis PA ("Investigator") to perform "an independent review of the City's internal processes, procedures and communications" insofar as they indicated preexisting knowledge by its employees of soil erosion hazards to visitors to the Park. The Investigator reviewed the City's actions from January 2009 through June 2013, and its work included extensive interviews of employees of the City's Parks and Recreation and Public Works departments and citizen advocates for the Park; compilation and examination of thousands of electronic files and communications related to the Park and the City's handling of issues related to soil erosion; and visits to the Park and the Incident site. The inquiry paralleled the work of Northern Technologies, Inc., the engineering firm engaged by the City to determine the cause of the May 22 slope failure.

The Investigator found that the City's Park and Recreation department has managed Lilydale Park—a 184-acre flood plain forest and lake—in a manner consistent with the goal of restoring it as a natural resource-based, undeveloped, and passive park. Long-range master planning for the Park has focused on improving access and preserving it against environmental threats, including the effects of water contamination and soil erosion. A proposed survey to identify soil erosion within the Park and to recommend control measures was included in the plan, but it had not been implemented by the time of the Incident. However, the master planning process—including input from citizens devoted to the Park—never revealed any knowledge or concerns that soil erosion posed safety risks to visitors to the Park or its Fossil Ground.

During the relevant time period, the City was aware that slope failures had occurred within the Park and elsewhere along the Mississippi River bluffs. In May 2011, there was one such incident just north of the East Clay Pit, but it was not witnessed by anyone, did not obstruct the designated trails, and caused no harm to people or damage to property. Nine months later, a Parks and Recreation forestry supervisor observed significant erosion while ice-climbing in the Fossil Ground, and reported to his colleagues that "the whole hillside is at risk to slide in heavy rains." In both instances, Parks and Recreation managers responded by inspecting the sites. Engineers with the Public Works Department also knew that a culvert feeding storm water into the Fossil Ground contributed to soil erosion; at the time of the Incident, the Sewer division was repairing drainage pipes along nearby Cherokee Heights Boulevard.

The Investigator concluded that, while City managers and employees had substantial knowledge that soil erosion was adversely impacting the Park, there was no evidence of actual knowledge of unstable bluffs that posed risks to the safety of visitors to the Park and its Fossil Ground. Rather, communications and actions of City employees reflected concerns that soil erosion would contaminate Pickerel Lake, impair access for recreation, damage neighboring property, and destroy the Park's natural beauty. Slope failures and soil erosion, even those reported in the months preceding the Incident, were considered natural occurrences that were difficult to predict or control along the vast expanse of bluffs within the Park. The Investigator also determined that there was adequate communication and cooperation between the City's departments regarding their responses to soil erosion in the Park, both immediate and long-term. In sum, the Investigator concluded that, to the extent that the City possessed general knowledge of soil erosion within the Park, it was insufficient to enable the City to predict and prevent the deadly slope failure at the East Clay Pit.